

**BENITA SALAO, ASSISTED BY HER HUSBAND, GREGORIO MARCELO;
ALMARIO ALCURIZA, ARTURO ALCURIZA, OSCAR ALCURIZA AND
ANITA ALCURIZA, THE LATTER TWO BEING MINORS ARE
REPRESENTED BY GUA...**

G.R. No. L-26699. March 16, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

This litigation regarding a forty-seven-hectare fishpond located at Sitio Calunuran, Hermosa, Bataan involves the law of trusts and prescription. The facts are as follows:

The spouses Manuel Salao and Valentina Ignacio of Barrio Dampalit, Malabon, Rizal begot four children named Patricio, Alejandra, Juan (Banli) and Ambrosia. Manuel Salao died in 1885. His eldest son, Patricio, died in 1886 survived by his only child, Valentin Salao.

There is no documentary evidence as to what properties formed part of Manuel Salao's estate, if any. His widow died on May 28, 1914. After her death, her estate was administered by her daughter Ambrosia.

It was partitioned extrajudicially in a deed dated December 29, 1918 but notarized on May 22, 1919 (Exh. 21). The deed was signed by her four legal heirs, namely, her three children, Alejandra, Juan and Ambrosia, and her grandson, Valentin Salao, in representation of his deceased father, Patricio.

The lands left by Valentina Ignacio, all located at Barrio Dampalit, were as follows:

Nature of Land

Area in square meters

(1) One-half interest in a fishpond which she had inherited from her parents, Feliciano Ignacio and Damiana Mendoza, and the other half of which was owned by her co-owner, Josefa Sta. Ana

21,700

(2) Fishpond inherited from her parents

7,418

(3) Fishpond inherited from her parents

6,989

(4) Fishpond with a bodega for salt

50,469

(5) Fishpond with an area of one hectare, 12 ares and 5 centares purchased from Bernabe and Honorata Ignacio by Valentina Ignacio on November 9, 1895 with a bodega for salt.

11,205

(6) Fishpond

8,000

(7) One-half interest in a fishpond with a total area of 10,424 square meters, the other half was owned by A. Aguinaldo

5,217

(8) Riceland

50,454

(9) Riceland purchased by Valentina Ignacio from Eduardo Salao on January 27, 1890 with a house and two camarins thereon

8,065

(10) Riceland in the name of Ambrosia Salao, with an area of 11,678 square meters, of which 2,173 square meters were sold to Justa Yongco

9,505

TOTAL

179,022

square meters

To each of the legal heirs of Valentina Ignacio was adjudicated a distributive share valued at P8,135.25. In satisfaction of his distributive share, Valentin Salao (who was then already forty-eight years old) was given the biggest fishpond with an area of 50,469 square meters, a smaller fishpond with an area of 6,989 square meters and the riceland with a net area of 9,905 square meters. Those parcels of land had an aggregate appraised value of

P13,501 which exceeded Valentin's distributive share. So in the deed of partition he was directed to pay to his coheirs the sum of P5,365.75. That arrangement, which was obviously intended to avoid the fragmentation of the lands, was beneficial to Valentin.

In that deed of partition (Exh. 21) it was noted that "desde la muerte de Valentina Ignacio y Mendoza, ha venido administrando sus bienes la referida Ambrosia Salao" "cuya administracion lo ha sido a satisfaccion de todos los herederos y por designacion los mismos". It was expressly stipulated that Ambrosia Salao was not obligated to render any accounting of her administration "en consideracion al resultado satisfactorio de sus gestiones, mejoradas los bienes y pagadas por ella las contribuciones" (pages 2 and 11, Exh. 21).

By virtue of the partition the heirs became "dueños absolutos de sus respectivas propiedades, y podran inmediatamente tomar posesion de sus bienes, en la forma como se han distribuido y llevado a cabo las adjudicaciones" (page 20, Exh. 21).

The documentary evidence proves that in 1911 or prior to the death of Valentina Ignacio her two children, Juan Y. Salao, Sr. and Ambrosia Salao, secured a Torrens title, OCT No. 185 of the Registry of Deeds of Pampanga, in their names for a forty-seven-hectare fishpond located at Sitio Calunuran, Lubao, Pampanga (Exh. 14). It is also known as Lot No. 540 of the Hermosa cadastre because that part of Lubao later became a part of Bataan.

The Calunuran fishpond is the bone of contention in this case.

Plaintiffs' theory is that Juan Y. Salao, Sr. and his sister Ambrosia had engaged in the fishpond business. Where they obtained the capital is not shown in any documentary evidence. Plaintiffs' version is that Valentin Salao and Alejandra Salao were included in that joint venture, that the funds used were the earnings of the properties supposedly inherited from Manuel Salao, and that those earnings were used in the acquisition of the Calunuran fishpond. There is no documentary evidence to support that theory.

On the other hand, the defendants contend that the Calunuran fishpond consisted of lands purchased by Juan Y. Salao, Sr. and Ambrosia Salao in 1905, 1906, 1907 and 1908 as shown in their Exhibits 8, 9, 10 and 13. But this point is disputed by the plaintiffs.

However, there can be no controversy as to the fact that after Juan Y. Salao, Sr. and Ambrosia Salao secured a Torrens title for the Calunuran fishpond in 1911 they exercised dominical rights over it to the exclusion of their nephew, Valentin Salao.

Thus, on December 1, 1911 Ambrosia Salao sold under pacto de retro for P800 the Calunuran fishpond to Vicente Villongco. The period of redemption was one year. In the deed of sale (Exh. 19) Ambrosia confirmed that she and her brother Juan were the dueños proindivisos of the said pesqueria. On December 7, 1911 Villongco, the vendee a retro, conveyed the same fishpond to Ambrosia by way of lease for an anual canon of P128 (Exh. 19-a).

After the fishpond was redeemed from Villongco or on June 8, 1914 Ambrosia and Juan sold it under pacto de retro to Eligio Naval for the sum of P3,360. The period of redemption was also one year (Exh. 20). The fishpond was later redeemed and Naval reconveyed it to the vendors a retro in a document dated October 5, 1916 (Exh. 20-a).

The 1930 survey shown in the computation sheets of the Bureau of Lands reveals that the Calunuran fishpond has an area of 479,205 square meters and that it was claimed by Juan Salao and Ambrosia Salao, while the Pinañganacan fishpond (subsequently acquired by Juan and Ambrosia) has an area of 975,952 square meters (Exh. 22).

Likewise, there is no controversy as to the fact that on May 27, 1911 Ambrosia Salao bought for four thousand

pesos from the heirs of Engracio Santiago a parcel of swampland planted to bakawan and nipa with an area of 96 hectares, 57 ares and 73 centares located at Sitio Lewa, Barrio Pinañganacan, Lubao, Pampanga (Exh. 17-d).

The record of Civil Case No. 136, General Land Registration Office Record No. 12144, Court of First Instance of Pampanga shows that Ambrosia Salao and Juan Salao filed an application for the registration of that land in their names on January 15, 1916. They alleged in their petition that "han adquirido dicho terreno por partes iguales y por la compra a los herederos del finado, Don Engracio Santiago" (Exh. 17-a).

At the hearing on October 26, 1916 before Judge Percy M. Moir, Ambrosia testified for the applicants. On that same day Judge Moir rendered a decision, stating inter alia, that the heirs of Engracio Santiago had sold the land to Ambrosia Salao and Juan Salao. Judge Moir "ordena la adjudicacion y registro del terreno solicitado a nombre de Juan Salao, mayor de edad y de estado casado y de su esposa Diega Santiago y Ambrosia Salao, de estado soltera y mayor de edad, en participaciones iguales" (Exh. 17-e).

On November 28, 1916 Judge Moir ordered the issuance of a decree for the said land. The decree was issued on February 21, 1917. On March 12, 1917 Original Certificate of Title No. 472 of the Registry of Deeds of Pampanga was issued in the names of Juan Salao and Ambrosia Salao.

That Pinañganacan or Lewa fishpond later became Cadastral Lot No. 544 of the Hermosa cadastre (Exh. 23). It adjoins the Calunuran fishpond (See sketch, Exh. 1).

Juan Y. Salao, Sr. died on November 3, 1931 at the age of eighty years (Exh. C). His nephew, Valentin Salao, died on February 9, 1933 at the age of sixty years according to the death certificate (Exh. A. However, if according to Exhibit 21, he was forty-eight years old in 1918, he would be sixty-three years old in 1933).

The intestate estate of Valentin Salao was partitioned extrajudicially on December 28, 1934 between his two daughters, Benita Salao-Marcelo and Victorina Salao-Alcuriza (Exh. 32). His estate consisted of the two fishponds which he had inherited in 1918 from his grandmother, Valentina Ignacio.

If it were true that he had a one-third interest in the Calunuran and Lewa fishponds with a total area of 145 hectares registered in 1911 and 1917 in the names of his aunt and uncle, Ambrosia Salao and Juan Y. Salao, Sr., respectively, it is strange that no mention of such interest was made in the extrajudicial partition of his estate in 1934.

It is relevant to mention that on April 8, 1940 Ambrosia Salao donated to her grandniece, plaintiff Benita Salao, three lots located at Barrio Dampalit with a total area of 5,832 square meters (Exh. L). As donee Benita Salao signed the deed of donation.

On that occasion she could have asked Ambrosia Salao to deliver to her and to the children of her sister, Victorina, the Calunuran fishpond if it were true that it was held in trust by Ambrosia as the share of Benita's father in the alleged joint venture.

But she did not make any such demand. It was only after Ambrosia Salao's death that she thought of filing an action for the reconveyance of the Calunuran fishpond which was allegedly held in trust and which had become the sole property of Juan Salao y Santiago (Juani).

On September 30, 1944 or during the Japanese occupation and about a year before Ambrosia Salao's death on September 14, 1945 due to senility (she was allegedly eighty-five years old when she died), she donated her one-half proindiviso share in the two fishponds in question to her nephew, Juan S. Salao, Jr. (Juani). At that time she was living with Juani's family. He was already the owner of the other half of the said fishponds, having inherited it from his father, Juan Y. Salao, Sr. (Banli). The deed of donation included other pieces of real property

owned by Ambrosia. She reserved for herself the usufruct over the said properties during her lifetime (Exh. 2 or M).

The said deed of donation was registered only on April 5, 1950 (page 39, Defendants' Record on Appeal).

The lawyer of Benita Salao and the children of Victorina Salao in a letter dated January 26, 1951 informed Juan S. Salao, Jr. that his clients had a one-third share in the two fishponds and that when Juani took possession thereof in 1945, he refused to give Benita and Victorina's children their one-third share of the net fruits which allegedly amounted to P200,000 (Exh. K).

Juan S. Salao, Jr. in his answer dated February 6, 1951 categorically stated that Valentin Salao did not have any interest in the two fishponds and that the sole owners thereof were his father Banli and his aunt Ambrosia, as shown in the Torrens titles issued in 1911 and 1917, and that he (Juani) was the donee of Ambrosia's one-half share (Exh. K-1).

Benita Salao and her nephews and niece filed their original complaint against Juan S. Salao, Jr. on January 9, 1952 in the Court of First Instance of Bataan (Exh. 36). They amended their complaint on January 28, 1955. They asked for the annulment of the donation to Juan S. Salao, Jr. and for the reconveyance to them of the Calunuran fishpond as Valentin Salao's supposed one-third share in the 145 hectares of fishpond registered in the names of Juan Y. Salao, Sr. and Ambrosia Salao.

Juan S. Salao, Jr. in his answer pleaded as a defense the indefeasibility of the Torrens title secured by his father and aunt. He also invoked the Statute of Frauds, prescription and laches. As counter-claims, he asked for moral damages amounting to P200,000, attorney's fees and litigation expenses of not less than P22,000 and reimbursement of the premiums which he has been paying on his bond for the lifting of the receivership. Juan S. Salao, Jr., died in 1958 at the age of seventy-one. He was substituted by his widow, Mercedes Pascual, and his six children and by the administrator of his estate.

In the intestate proceedings for the settlement of his estate the two fishponds in question were adjudicated to his seven legal heirs in equal shares with the condition that the properties would remain under administration during the pendency of this case (page 181, Defendants' Record on Appeal).

After trial the lower court in its decision consisting of one hundred ten printed pages dismissed the amended complaint and the counter-claim. In sixty-seven printed pages it made a laborious recital of the testimonies of plaintiffs' fourteen witnesses, Gregorio Marcelo, Norberto Crisostomo, Leonardo Mangali, Fidel de la Cruz, Dionisio Manalili, Ambrosio Manalili, Policarpio Sapno, Elias Manies, Basilio Atienza, Benita Salao, Emilio Cagui, Damaso de la Peña, Arturo Alcuriza and Francisco Buensuceso, and the testimonies of defendants' six witnesses, Marcos Galicia, Juan Galicia, Tiburcio Lingad, Doctor Wenceslao Pascual, Ciriaco Ramirez and Pablo P. Salao. (Plaintiffs presented Regino Nicodemus as a fifteenth witness, a rebuttal witness).

The trial court found that there was no community of property among Juan Y. Salao, Sr., Ambrosia Salao and Valentin Salao when the Calunuran and Pinañganacan (Lewa) lands were acquired; that a co-ownership over the real properties of Valentina Ignacio existed among her heirs after her death in 1914; that the co-ownership was administered by Ambrosia Salao and that it subsisted up to 1918 when her estate was partitioned among her three children and her grandson, Valentin Salao.

The trial court surmised that the co-ownership which existed from 1914 to 1918 misled the plaintiffs and their witnesses and caused them to believe erroneously that there was a co-ownership in 1905 or thereabouts. The trial court speculated that if Valentin had a hand in the conversion into fishponds of the Calunuran and Lewa lands, he must have done so on a salary or profit-sharing basis. It conjectured that Valentin's children and grandchildren

were given by Ambrosia Salao a portion of the earnings of the fishponds as a reward for his services or because of Ambrosia's affection for her grandnieces.

The trial court rationalized that Valentin's omission during his lifetime to assail the Torrens titles of Juan and Ambrosia signified that "he was not a co-owner" of the fishponds. It did not give credence to the testimonies of plaintiffs' witnesses because their memories could not be trusted and because no strong documentary evidence supported the declarations. Moreover, the parties involved in the alleged trust were already dead.

It also held that the donation was validly executed and that even if it were void Juan S. Salao, Jr., the donee, would nevertheless be the sole legal heir of the donor, Ambrosia Salao, and would inherit the properties donated to him.

Both parties appealed. The plaintiffs appealed because their action for reconveyance was dismissed. The defendants appealed because their counterclaim for damages was dismissed.

The appeals, which deal with factual and legal issues, were made to the Court of Appeals. However, as the amounts involved exceed two hundred thousand pesos, the Court of Appeals elevated the case to this Court in its resolution of October 3, 1966 (CA-G.R. No. 30014-R).

Plaintiffs' appeal. - An appellant's brief should contain "a subject index of the matter in the brief with a digest of the argument and page references" to the contents of the brief (Sec. 16[a] Rule 46, 1964 Rules of Court; Sec. 17, Rule 48, 1940 Rules of Court).

The plaintiffs in their appellants' brief consisting of 302 pages did not comply with that requirement. Their statements of the case and the facts do not contain "page references to the record" as required in section 16[c] and [d] of Rule 46, formerly section 17, Rule 48 of the 1940 Rules of Court.

Lawyers for appellants, when they prepare their briefs, would do well to read and re-read section 16 of Rule 46. If they comply strictly with the formal requirements prescribed in section 16, they might make a competent and luminous presentation of their clients' case and lighten the burden of the Court.

What Justice Fisher said in 1918 is still true now: "The pressure of work upon this Court is so great that we cannot, in justice to other litigants, undertake to make an examination of the voluminous transcript of the testimony (1,553 pages in this case, twenty-one witnesses having testified), unless the attorneys who desire us to make such examination have themselves taken the trouble to read the record and brief it in accordance with our rules" (Palarca vs. Baguisi, 38 Phil. 177, 181). As noted in an old case, this Court decides hundreds of cases every year and in addition resolves in minute orders an exceptionally considerable number of petitions, motions and interlocutory matters (Alzua and Arnalot vs. Johnson, 21 Phil. 308, 395; See *In re Almacen*, L-27654, February 18, 1970, 31 SCRA 562, 573).

Plaintiffs' first assignment of error raised a procedural issue. In paragraphs 1 to 14 of their first cause of action they made certain averments to establish their theory that Valentin Salao had a one-third interest in the two fishponds which were registered in the names of Juan Y. Salao, Sr. (Banli) and Ambrosia Salao.

Juan S. Salao, Jr. (Juani) in his answer "specifically" denied "each and all the allegations" in paragraphs 1 to 10 and 12 of the first cause of action with the qualification that Original Certificates of Title Nos. 185 and 472 were issued "more than 37 years ago" in the names of Juan (Banli) and Ambrosia under the circumstances set forth in Juan S. Salao, Jr.'s "positive defenses" and "not under the circumstances stated in the amended complaint".

The plaintiffs contend that the answer of Juan S. Salao, Jr. was in effect an admission of the allegations in their first cause of action that there was a co-ownership among Ambrosia, Juan, Alejandra and Valentin, all surnamed

Salao, regarding the Dampalit property as early as 1904 or 1905; that the common funds were invested in the acquisition of the two fishponds; that the 47-hectare Calunuran fishpond was verbally adjudicated to Valentin Salao in the 1919 partition and that there was a verbal stipulation to register "said lands in the name only of Juan Y. Salao".

That contention is unfounded. Under section 6, Rule 9 of the 1940 Rules of Court the answer should "contain either a specific denial or a statement of matters in avoidance of the cause or causes of action asserted in the complaint". Section 7 of the same rule requires the defendant to "deal specifically with each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters which he will rely upon to support his denial". "Material averments in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied" (Sec. 8). "The defendant may set forth by answer as many affirmative defenses as he may have. All such grounds of defenses as would raise issues of fact not arising upon the preceding pleading must be specifically pleaded" (Sec. 9).

What defendant Juan S. Salao, Jr. did in his answer was to set forth in his "positive defenses" the matters in avoidance of plaintiffs' first cause of action which supported his denials of paragraphs 1 to 10 and 12 of the first cause of action. Obviously, he did so because he found it impracticable to state piecemeal his own version as to the acquisition of the two fishponds or to make a tedious and repetitious recital of the ultimate facts contradicting the allegations of the first cause of action.

We hold that in doing so he substantially complied with Rule 9 of the 1940 Rules of Court. It may be noted that under the present Rules of Court a "negative defense is the specific denial of the material fact or facts alleged in the complaint essential to the plaintiff's cause or causes of action". On the other hand, "an affirmative defense is an allegation of new matter which, while admitting the material allegations of the complaint, expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff". Affirmative defenses include all matters set up "by way of confession and avoidance". (Sec. 5, Rule 6, Rules of Court).

The case of *El Hogar Filipino vs. Santos Investments*, 74 Phil. 79 and similar cases is distinguishable from the instant case. In the *El Hogar* case the defendant filed a laconic answer containing the statement that it denied "generally and specifically each and every allegation contained in each and every paragraph of the complaint". It did not set forth in its answer any matter by way of confession and avoidance. It did not interpose any affirmative defenses.

Under those circumstances, it was held that defendant's specific denial was really a general denial which was tantamount to an admission of the allegations of the complaint and which justified judgment on the pleadings. That is not the situation in this case.

The other nine assignments of error of the plaintiffs may be reduced to the decisive issue of whether the Calunuran fishpond was held in trust for Valentin Salao by Juan Y. Salao, Sr. and Ambrosia Salao. That issue is tied up with the question of whether plaintiffs' action for reconveyance had already prescribed.

The plaintiffs contend that their action is "to enforce a trust which defendant" Juan S. Salao, Jr. allegedly violated. The existence of a trust was not definitely alleged in plaintiffs' complaint. They mentioned trust for the first time on page 2 of their appellants' brief.

To determine if the plaintiffs have a cause of action for the enforcement of a trust, it is necessary to make some exegesis on the nature of trusts (*fideicomisos*). Trusts in Anglo-American jurisprudence were derived from the *fideicommissa* of the Roman law (*Government of the Philippine Islands vs. Abadilla*, 46 Phil. 642, 646).

"In its technical legal sense, a trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment

of property, the legal title to which is vested in another, but the word 'trust' is frequently employed to indicate duties, relations, and responsibilities which are not strictly technical trusts" (89 C.J.S. 712).

"A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary" (Art. 1440, Civil Code). There is a fiduciary relation between the trustee and the cestui que trust as regards certain property, real, personal, money or choses in action (Pacheco vs. Arro, 85 Phil. 505).

"Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law" (Art. 1441, Civil Code). "No express trusts concerning an immovable or any interest therein may be proven by parol evidence. An implied trust may be proven by oral evidence" (Ibid, Arts. 1443 and 1457).

"No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended" (Ibid, Art. 1444; Tuason de Perez vs. Caluag, 96 Phil. 981; Julio vs. Dalandan, L-19012, October 30, 1967, 21 SCRA 543, 546). "Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust" (89 C.J.S. 722).

"Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties" (89 C.J.S. 724). They are ordinarily subdivided into resulting and constructive trusts (89 C.J.S. 722).

"A resulting trust is broadly defined as a trust which is raised or created by the act or construction of law, but in its more restricted sense it is a trust raised by implication of law and presumed always to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction, but not expressed in the deed or instrument of conveyance" (89 C.J.S. 725). Examples of resulting trusts are found in articles 1448 to 1455 of the Civil Code. (See Padilla vs. Court of Appeals, L-31569, September 28, 1973, 53 SCRA 168, 179; Martinez vs. Graño, 42 Phil. 35).

On the other hand, a constructive trust is a trust "raised by construction of law, or arising by operation of law". In a more restricted sense and as contradistinguished from a resulting trust, a constructive trust is "a trust not created by any words, either expressly or impliedly evincing a direct intention to create a trust, but by the construction of equity in order to satisfy the demands of justice". It does not arise "by agreement or intention, but by operation of law." (89 C.J.S. 726-727).

Thus, "if property is acquired through mistake or fraud, the person obtaining it is by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes" (Art. 1456, Civil Code).

Or "if a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party". Such a constructive trust is not a trust in the technical sense. (Gayondato vs. Treasurer of the P.I., 49 Phil. 244).

Not a scintilla of documentary evidence was presented by the plaintiffs to prove that there was an express trust over the Calunuran fishpond in favor of Valentin Salao. Purely parol evidence was offered by them to prove the alleged trust. Their claim that in the oral partition in 1919 of the two fishponds the Calunuran fishpond was assigned to Valentin Salao is legally untenable.

It is legally indefensible because the terms of article 1443 of the Civil Code (already in force when the action herein was instituted) are peremptory and unmistakable: parol evidence cannot be used to prove an express trust concerning realty.

Is plaintiffs' massive oral evidence sufficient to prove an implied trust, resulting or constructive, regarding the two fishponds?

Plaintiffs' pleadings and evidence cannot be relied upon to prove an implied trust. The trial court's firm conclusion that there was no community of property during the lifetime of Valentina Ignacio or before 1914 is substantiated by defendants' documentary evidence. The existence of the alleged co-ownership over the lands supposedly inherited from Manuel Salao in 1885 is the basis of plaintiffs' contention that the Calunuran fishpond was held in trust for Valentin Salao.

But that co-ownership was not proven by any competent evidence. It is quite improbable because the alleged estate of Manuel Salao was likewise not satisfactorily proven. The plaintiffs alleged in their original complaint that there was a co-ownership over two hectares of land left by Manuel Salao. In their amended complaint, they alleged that the co-ownership was over seven hectares of fishponds located in Barrio Dampalit, Malabon, Rizal. In their brief they alleged that the fishponds, ricelands and saltbeds owned in common in Barrio Dampalit had an area of twenty-eight hectares of which sixteen hectares pertained to Valentina Ignacio and eleven hectares represented Manuel Salao's estate.

They theorized that the eleven hectares "were, and necessarily, the nucleus, nay the very root, of the property now in litigation" (page 6, plaintiffs-appellants' brief). But the eleven hectares were not proven by any trustworthy evidence. Benita Salao's testimony that in 1918 or 1919 Juan, Ambrosia, Alejandra and Valentin partitioned twenty-eight hectares of lands located in Barrio Dampalit is not credible. As noted by the defendants, Manuel Salao was not even mentioned in plaintiffs' complaints.

The 1919 partition of Valentina Ignacio's estate covered about seventeen hectares of fishponds and ricelands (Exh. 21). If at the time that partition was made there were eleven hectares of land in Barrio Dampalit belonging to Manuel Salao, who died in 1885, those eleven hectares would have been partitioned in writing as in the case of the seventeen hectares belonging to Valentina Ignacio's estate.

It is incredible that the forty-seven-hectare Calunuran fishpond would be adjudicated to Valentin Salao merely by word of mouth. Incredible because for the partition of the seventeen hectares of land left by Valentina Ignacio an elaborate "Escritura de Particion" consisting of twenty-two pages had to be executed by the four Salao heirs. Surely, for the partition of one hundred forty-five hectares of fishponds among three of the same Salao heirs an oral adjudication would not have sufficed.

The improbability of the alleged oral partition becomes more evident when it is borne in mind that the two fishponds were registered land and "the act of registration" is "the operative act" that conveys and affects the land (Sec. 50, Act No. 496). That means that any transaction affecting the registered land should be evidenced by a registerable deed. The fact that Valentin Salao and his successors-in-interest, the plaintiffs, never bothered for a period of nearly forty years to procure any documentary evidence to establish his supposed interest or participation in the two fishponds is very suggestive of the absence of such interest.

The matter may be viewed from another angle. As already stated, the deed of partition for Valentina Ignacio's estate was notarized in 1919 (Exh. 21). The plaintiffs assert that the two fishponds were verbally partitioned also in 1919 and that the Calunuran fishpond was assigned to Valentin Salao as his share.

Now, in the partition of Valentina Ignacio's estate, Valentin was obligated to pay P3,355.25 to Ambrosia Salao. If,

according to the plaintiffs, Ambrosia administered the two fishponds and was the custodian of its earnings, then it could have been easily stipulated in the deed partitioning Valentina Ignacio's estate that the amount due from Valentin would just be deducted by Ambrosia from his share of the earnings of the two fishponds. There was no such stipulation. Not a shred of documentary evidence shows Valentin's participation in the two fishponds.

The plaintiffs utterly failed to measure up to the yardstick that a trust must be proven by clear, satisfactory and convincing evidence. It cannot rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations (*De Leon vs. Molo-Peckson*, 116 Phil. 1267, 1273).

"Trust and trustee; establishment of trust by parol evidence; certainty of proof. – Where a trust is to be established by oral proof, the testimony supporting it must be sufficiently strong to prove the right of the alleged beneficiary with as much certainty as if a document proving the trust were shown. A trust cannot be established, contrary to the recitals of a Torrens title, upon vague and inconclusive proof." (*Syllabus, Suarez vs. Tirambulo*, 59 Phil. 303).

"Trusts; evidence needed to establish trust on parol testimony. – In order to establish a trust in real property by parol evidence, the proof should be as fully convincing as if the act giving rise to the trust obligation were proven by an authentic document. Such a trust cannot be established upon testimony consisting in large part of insecure surmises based on ancient hearsay." (*Syllabus, Santa Juana vs. Del Rosario*, 50 Phil. 110).

The foregoing rulings are good under article 1457 of the Civil Code which, as already noted, allows an implied trust to be proven by oral evidence. Trustworthy oral evidence is required to prove an implied trust because oral evidence can be easily fabricated.

On the other hand, a Torrens title is generally a conclusive evidence of the ownership of the land referred to therein (Sec. 47, Act 496). A strong presumption exists that Torrens titles were regularly issued and that they are valid. In order to maintain an action for reconveyance, proof as to the fiduciary relation of the parties must be clear and convincing (*Yumul vs. Rivera and Dizon*, 64 Phil. 13, 17-18).

The real purpose of the Torrens system is to quiet title to land. "Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the mirador de su casa, to avoid the possibility of losing his land" (*Legarda and Prieto vs. Saleeby*, 31 Phil. 590, 593).

There was no resulting trust in this case because there never was any intention on the part of Juan Y. Salao, Sr., Ambrosia Salao and Valentin Salao to create any trust. There was no constructive trust because the registration of the two fishponds in the names of Juan and Ambrosia was not vitiated by fraud or mistake. This is not a case where to satisfy the demands of justice it is necessary to consider the Calunuran fishpond as being held in trust by the heirs of Juan Y. Salao, Sr. for the heirs of Valentin Salao.

And even assuming that there was an implied trust, plaintiffs' action is clearly barred by prescription or laches (*Ramos vs. Ramos*, L-19872, December 3, 1974, 61 SCRA 284; *Quiñiano vs. Court of Appeals*, L-23024, May 31, 1971, 39 SCRA 221; *Varsity Hills, Inc. vs. Navarro*, L-30889, February 29, 1972, 43 SCRA 503; *Alzona vs. Capunitan and Reyes*, 114 Phil. 377).

Under Act No. 190, whose statute of limitation would apply if there were an implied trust in this case, the longest period of extinctive prescription was only ten years (Sec. 40; *Diaz vs. Gorricho and Aguado*, 103 Phil. 261, 266).

The Calunuran fishpond was registered in 1911. The written extrajudicial demand for its reconveyance was made by the plaintiffs in 1951. Their action was filed in 1952 or after the lapse of more than forty years from the date of registration. The plaintiffs and their predecessor-in-interest, Valentin Salao, slept on their rights, if they had any rights at all. *Vigilanti prospiciunt jura* or the law protects him who is watchful of his rights (92 C.J.S. 1011, citing

Esguerra vs. Tecson, 21 Phil. 518, 521).

"Undue delay in the enforcement of a right is strongly persuasive of a lack of merit in the claim, since it is human nature for a person to assert his rights more strongly when they are threatened or invaded". "Laches or unreasonable delay on the part of a plaintiff in seeking to enforce a right is not only persuasive of a want of merit but may, according to the circumstances, be destructive of the right itself." (Buenaventura vs. David, 37 Phil. 435, 440-441).

Having reached the conclusion that the plaintiffs are not entitled to the reconveyance of the Calunuran fishpond, it is no longer necessary to pass upon the validity of the donation made by Ambrosia Salao to Juan S. Salao, Jr. of her one-half share in the two fishponds. The plaintiffs have no right and personality to assail that donation.

Even if the donation were declared void, the plaintiffs would not have any successional rights to Ambrosia's share. The sole legal heir of Ambrosia was her nephew, Juan, Jr., her nearest relative within the third degree. Valentin Salao, if living in 1945 when Ambrosia died, would have been also her legal heir, together with his first cousin, Juan Jr. (Juani). Benita Salao, the daughter of Valentin, could not represent him in the succession to the estate of Ambrosia since in the collateral line, representation takes place only in favor of the children of brothers or sisters, whether they be of the full or half blood (Art. 972, Civil Code). The nephew excludes a grandniece like Benita Salao or great-grandnephews like the plaintiffs Alcuriza (Pavia vs. Iturralde, 5 Phil. 176).

The trial court did not err in dismissing plaintiffs' complaint.

Defendants' appeal. – The defendants dispute the lower court's finding that the plaintiffs filed their action in good faith. The defendants contend that they are entitled to damages because the plaintiffs acted maliciously or in bad faith in suing them. They ask for P25,000 attorney's fees and litigation expenses and, in addition, moral damages.

We hold that defendants' appeal is not meritorious. The record shows that the plaintiffs presented fifteen witnesses during the protracted trial of this case which lasted from 1954 to 1959. They fought tenaciously. They obviously incurred considerable expenses in prosecuting their case. Although their causes of action turned out to be unfounded, yet the pertinacity and vigor with which they pressed their claim indicate their sincerity and good faith.

There is the further consideration that the parties were descendants of common ancestors, the spouses Manuel Salao and Valentina Ignacio, and that plaintiffs' action was based on their honest supposition that the funds used in the acquisition of the lands in litigation were earnings of the properties allegedly inherited from Manuel Salao.

Considering those circumstances, it cannot be concluded with certitude that plaintiffs' action was manifestly frivolous or was primarily intended to harass the defendants. An award for damages to the defendants does not appear to be just and proper.

The worries and anxiety of a defendant in a litigation that was not maliciously instituted are not the moral damages contemplated in the law (Solis & Yarisantos vs. Salvador, L-17022, August 14, 1965, 14 SCRA 887; Ramos vs. Ramos, *supra*).

The instant case is not among the cases mentioned in articles 2219 and 2220 of the Civil Code wherein moral damages may be recovered. Nor can it be regarded as analogous to any of the cases mentioned in those articles.

"The adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate; such right is so precious that moral damages may not be charged on those who may exercise it erroneously." (Barreto vs. Arevalo, 99 Phil. 771, 779).

The defendants invoke article 2208 (4) (11) of the Civil Code which provides that attorney's fees may be recovered "in case of a clearly unfounded civil action or proceeding against the plaintiff" (defendant is a plaintiff in his counterclaim) or "in any other case where the court deems it just and equitable" that attorney's fees should be awarded.

But once it is conceded that the plaintiffs acted in good faith in filing their action there would be no basis for adjudging them liable to the defendants for attorney's fees and litigation expenses (See *Rizal Surety & Insurance Co., Inc. vs. Court of Appeals*, L-23729, May 16, 1967, 20 SCRA 61).

It is not sound public policy to set a premium on the right to litigate. An adverse decision does not ipso facto justify the award of attorney's fees to the winning party (*Herrera vs. Luy Kim Guan*, 110 Phil. 1020, 1028; *Heirs of Justiva vs. Gustilo*, 61 O.G. 6959).

The trial court's judgment is affirmed. No pronouncement as to costs. SO ORDERED.

Barredo, (Chairman), Antonio, Concepcion Jr., and Martin, JJ., concur.

Fernando, J., Chairman of the Second Division, being out of the country, did not take part.

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